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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

No. 581

MIRIAM J. WOLF,

*Petitioner,*

*v.*

CLAY BLAIR, JR., MATTHEW J. CULLIGAN, MILTON S. GOULD, MARVIN D. KANTOR and THE CURTIS PUBLISHING COMPANY,

*Respondents.*

## REPLY BRIEF FOR RESPONDENT, THE CURTIS PUBLISHING COMPANY, IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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## REPLY BRIEF FOR RESPONDENT, THE CURTIS PUBLISHING COMPANY, IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

This brief is respectfully submitted on behalf of Respondent, The Curtis Publishing Company ("Curtis"), in order to correct the record as to certain allegations of fact contained in Petitioner's reply brief and to answer the arguments made therein.

### 1. Petitioner's Factual Errors.

Petitioner's reply brief attempts to supplement the Record which she made herein by narrating "facts and circumstances of public record" (Br. 5-9). Most of the purportedly factual matters discussed there are neither facts contained in the Record nor facts of public record;

they are instead newspaper reports which are erroneous or misleading in key aspects. The most significant example is Petitioner's assumption, based on a story in The New York Times, that general releases were given by Curtis to Respondents Blair and Kantor in connection with the settlement of their action against Curtis for alleged breach of their employment agreements (Br. 6, 9). The fact is that Curtis gave Blair and Kantor releases which specifically provided that they "shall have no application in respect of any claim asserted in the presently pending derivative action brought by Miriam J. Wolf". Petitioner also assumes that Curtis gave a general release to Respondent Culligan in connection with its termination of his employment agreement, but in fact Curtis gave no release whatever to Culligan. It is thus clear that Curtis has done nothing which would interfere with Petitioner's prosecuton of this action.

**2. Petitioner's Legal Contentions Are Unsound.**

Petitioner's reply brief repeatedly and mistakenly asserts that something Curtis did had the result of extinguishing the claims asserted in her complaint. Curtis' position can best be expressed by its answers to the three specific questions posed at page 9 of Petitioner's reply brief.

Petitioner asks, "Does Curtis suggest that the general releases may be impeached in this action?" Our answer is, "No general releases or other releases relating to claims asserted in Petitioner's class action were given."

Petitioner asks, "Does [Curtis] also suggest that the large consideration which it paid and has agreed to pay to Culligan, Kantor and Blair may be the subject of a restitution decree in this action?" Our answer is, "If, under the original Complaint in the action, the court finds that the employment agreements, which were the subject of the

disputes with these three Respondents, contained improper provisions, the court would have the same power to order restitution as it would have had if Curtis had taken no later action whatever with respect to those agreements."

Petitioner asks, "If so, why effect the settlements outside the framework of this action?" Our answer is, "The settlements it made were not effected within the framework of this action because they were not settlements of this action. They were resolutions of other disputes not encompassed within Petitioner's original Complaint."

It is argued that the inclusion of a new third cause of action in Petitioner's Amended and Supplemental Complaint dealing with the settlements Curtis made should not preclude this Court from hearing the issues raised by her petition. She argues that if her contention as to the scope of Rule 23(c) is sound the inclusion of the new cause of action is "irrelevant" (Br. 10). But this new cause of action is not irrelevant. Since Petitioner has now raised issues regarding those settlements, there is no need for this Court to pass upon the scope of Rule 23(c).

By her motion, Petitioner sought to enjoin Curtis from taking any action which would have constituted a settlement of her class action in violation of Rule 23(c). Curtis took no such action. None of the actions it took violated Rule 23(c) because none of them had any effect on the ability of Petitioner to prosecute her class action, and, unlike the cases cited on page 2 of Petitioner's reply brief, no action was taken until after the District Court denied Petitioner's motion on the merits. Since no controversy is now pending or threatened between Curtis and Culligan, Blair or Kantor, Petitioner's contentions are clearly moot.

## CONCLUSION

For all of the foregoing reasons and for all of the reasons stated in Curtis' main brief, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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